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THE RICHARDS GROUP, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT

SAN FRANCISCO DIVISION

SONY COMPUTER ENTERTAINMENT AMERICA LLC, a Delaware limited liability company,

Plaintiff,

v.

BRIDGESTONE AMERICAS, INC., a Nevada corporation; THE RICHARDS GROUP, INC., a Texas corporation; and DOES 1 through 10,

Defendants.

CASE NO. C12-04753 CRB

DEFENDANT THE RICHARDS GROUP INC.'S NOTICE OF MOTION AND MOTION TO DISMISS SONY COMPUTER ENTERTAINMENT AMERICA LLC'S FIRST AMENDED COMPLAINT

FED. R. CIV. P. 12(b)(6)

[[PROPOSED] ORDER FILED CONCURRENTLY]

Date: June 21, 2013
Time: 10:00 a.m.
Courtroom: 6
Judge: Hon. Charles R. Breyer

TO PLAINTIFF AND DEFENDANT BRIDGESTONE AMERICAS, INC. AND THEIR ATTORNEYS:

PLEASE TAKE NOTICE that on June 21, 2013, at 10:00 a.m., or as soon thereafter as the matter can be heard in the above-entitled Court, located at 450 Golden Gate Avenue San Francisco, California 94102, defendant The Richards Group, Inc. ("TRG") will and hereby does move the Court for an order dismissing the second claim for relief (Unfair Competition, Cal. Bus. & Prof. Code §§ 17200, et seq.), the fifth claim for relief (Tortious Interference with Contractual Relations), and the request for injunctive relief as to all causes of action in the First Amended Complaint ("FAC") filed by plaintiff Sony Computer Entertainment America, LLC's ("SCEA"). The grounds for TRG's Motion are: (1) the allegations in support of SCEA's claim for tortious interference with contractual relations are conclusory and fail to allege sufficient facts as required by *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); (2) SCEA's injunctive relief request (as to SCEA's first, second, third, fourth, fifth claims for relief) does not seek to enjoin any ongoing activity, is deficiently pled, and is not narrowly tailored to address only matters put at issue by the FAC; and (3) SCEA's claim violation of California Business & Professional Code § 17200 has no authorized remedy available under California Business & Professional Code § 17203.

TRG's motion will be based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, all reply papers filed in support of this Motion, any oral argument that may be heard by this Court, and the pleadings and papers filed in this lawsuit.

ISSUES TO BE DECIDED

1. SCEA alleges that TRG knew about (and induced breach of) a contract involving SCEA and an actor. Is it enough to allege only those conclusions, or must SCEA allege adequate facts to support those conclusions in order to avoid dismissal of its tortious interference with contractual relations claim?

2. Is SCEA's request for injunctive relief legally deficient for any one of three reasons (each of which can independently provide a basis for dismissal): (a) SCEA has not alleged any ongoing activity violating its rights, nor has SCEA alleged there is likely to be future

activity that would violate its rights; (b) SCEA broadly asks the Court to effectively enjoin TRG to "obey the law"; and (c) the injunctive relief sought extends far beyond the matters put at issue in the FAC.

3. The only available remedies for violation of California Business & Professions Code section 17200 are injunctive relief and restitution. Because SCEA has made no request for restitution (and any such request would be legally deficient on its face, in any event), if the Court dismisses SCEA's injunctive relief request, should the Court also dismiss SCEA's claim for violation of California Business & Professions Code section 17200 as having no available remedy?

SUMMARY OF ARGUMENTS

1. The Court should dismiss SCEA's fifth claim for relief for tortious interference because SCEA's knowledge and intentional interference/inducement allegations in support of this claim are conclusory and fail to "allege enough facts to state a claim to relief that is plausible on its face" as required by *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). *See, e.g., Hoffman v. L & M Arts*, 774 F.Supp.2d 826, 846 (N.D. Tex. 2011).

2. The Court should dismiss SCEA's request for injunctive relief as to all claims for the following reasons: (a) SCEA has not alleged (and cannot allege) any continuing conduct that should be enjoined (*United States v. Oregon State Med. Soc.*, 343 U.S. 326, 333 (1952)); (b) SCEA cannot ask the Court to effectively enjoin TRG to "obey the law" (*Mancha v. Immigration & Customs Enforcement*, 2007 WL 4287766, at *3 (N.D. Ga. Dec. 5, 2007); *Louis W. Epstein Family P'ship v. Kmart Corp.*, 13 F.3d 762, 771 (3d Cir. 1994)); (c) SCEA's requested injunctive relief extends far beyond the matters put at issue in the FAC (*Castro v. Kailin*, 2012 WL 209187, at *3 (C.D. Cal. Jan. 24, 2012)).

3. The Court should dismiss SCEA's second claim for relief for violation of California Business & Professions Code § 17200 because SCEA has not alleged (and cannot allege) that it is entitled to any available remedy under the law. The only remedies available for a Cal. Bus. & Prof. Code § 17200 violation are injunctive relief and restitution. SCEA's injunctive

relief request should be dismissed for the reasons enumerated above. And here, there is no monetary relief requested that could conceivably be considered restitution (which involves either getting money or property back that was taken from plaintiff, or obtaining money or property in which plaintiff as a vested interest). *See Watson Laboratories, Inc. v. Rhone–Poulenc Rorer, Inc.*, 178 F.Supp.2d 1099, 1121-1122 (C.D. Cal. 2001). SCEA may not disguise a damages claim as a claim for restitution. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134, 1152 (2003).

Dated: May 7, 2013

Respectfully submitted,

CARLSMITH BALL LLP

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Attorneys for Defendant
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Sony Computer Entertainment America, LLC ("SCEA") brings this suit because an actor that appeared in commercials for its Playstation game system also appeared in a commercial for Bridgestone tires. The Bridgestone commercial had a cross-promotion with the Nintendo Wii game system, and according to SCEA, the actor's participation in that commercial breached a contract that SCEA had with the actor's loan-out company (the entity that contracts to provide the actor's services). SCEA contends that defendant The Richards Group, Inc. ("TRG"), which produced the commercial, knew about the contract in advance and induced the actor's loan-out company to breach it. The problem for SCEA is that it can allege nothing more than mere conclusions that TRG knew about the contract and induced the breach. Despite six months having passed since it filed the original complaint, SCEA alleges no facts whatsoever in the First Amended Complaint ("FAC") to suggest that those conclusions are plausible (and, in fact, they are not). Vague and conclusory allegations like those found in the FAC are no longer permitted in federal court, and as a result, the Court should dismiss plaintiff's tortious interference with contractual relations claim.

SCEA also asks the Court to broadly enjoin TRG from engaging in Lanham Act violations, misappropriation and unfair competition. In other words, SCEA asks the Court to enjoin TRG to "obey the law." Such impermissibly indeterminate injunction requests are routinely (and appropriately) dismissed at the pleading stage. What is more, SCEA cannot identify in the FAC any ongoing activity that it is seeking to enjoin. A request for injunctive relief targeting only prior alleged misconduct is not proper, and should be dismissed.

Without injunctive relief available to SCEA, the Court should also dismiss the unfair competition claim asserted under California Business & Professions Code section 17200. The only other available remedy for that claim is restitution, and SCEA has not alleged (and cannot allege) any basis for a restitutionary recovery.

TRG vigorously disputes all of the claims advanced by SCEA, and is prepared to litigate each of them through disposition on the merits. In order to avoid needless expense to the parties

and drain on judicial resources, however, TRG respectfully requests that this Court dismiss those claims that are legally deficient on the pleadings. The parties and the Court can then rightly concentrate their efforts on the remaining elements of the FAC.

II. OVERVIEW OF RELEVANT FACTS

As alleged in the FAC, TRG is an advertising agency that produced a series of commercials for its client, defendant Bridgestone Americas, Inc. ("Bridgestone"), including one commercial involving a co-promotion with Bridgestone tires and a Nintendo Wii game system (the "Game On!" commercial). (FAC ¶ 3.) Among the actors appearing in those commercials (including the Game On! commercial) was an actor (Jerry Lambert) whose services were provided by a loan-out entity called Wildcat Creek. (FAC ¶ 3.)

SCEA alleges that it had an agreement with Wildcat Creek concerning the acting services of Lambert, who played a character in commercials for SCEA's Playstation game system. (FAC ¶¶ 16, 20) According to SCEA, its agreement with Wildcat Creek prohibited Lambert from providing his services or his likeness in connection with advertising, promotion or sale of an electronic game or gaming system or any product related to electronic games or gaming systems manufactured or distributed by certain companies, including Nintendo. (FAC ¶ 17.)

SCEA goes on to allege that shortly after its agreement with Wildcat Creek expired, the Game On! commercial began airing. (FAC ¶ 23.) Recognizing that those broadcasts alone could not constitute a breach by Wildcat Creek (since the agreement had expired by then), SCEA alleges that the commercial must have been produced while the SCEA/Wildcat Creek agreement was still operative. (FAC ¶ 25.) It is presumably SCEA's theory that Wildcat Creek breached the agreement by permitting Lambert to participate in the production of the commercial.

But SCEA is no longer asserting any claims against Wildcat Creek (or Lambert) relating to that alleged contractual breach. Neither Wildcat Creek nor Lambert are named as defendants in the FAC. SCEA now claims that TRG (along with Bridgestone) are responsible for tortiously interfering with its contractual relationship by inducing Wildcat Creek to breach the SCEA/ Wildcat Creek agreement. In support of this claim, SCEA alleges that: (1) "On information and belief, Bridgestone and TRG were aware of the existence of the [SCEA/Wildcat Creek]

Agreement, including the exclusivity provision in which Wildcat Creek agreed not to provide services for any products in competition with PlayStation products"; and (2) "On information and belief, Bridgestone and TRG knew that interference with the [SCEA/Wildcat Creek] Agreement would occur when the actor provided services to promote the Nintendo Wii in the Co-Promotion." (FAC ¶ 26.) SCEA then repeats these conclusory contentions in its tortious interference claim by alleging that "Defendants had knowledge of [the SCEA/Wildcat Creek] contractual relationship and the exclusive nature of it," and that "Defendants intentionally interfered with SCEA's contractual relationship through the unlawful conduct alleged herein." FAC ¶¶ 63-64.)

As part of its tortious interference claim, SCEA contends that it is "entitled to injunctive relief preventing any further tortious interference of its contractual relationship." (FAC ¶ 68.) Indeed, SCEA seeks the same sort of injunctive relief as to several of its claims. In its Prayer for Relief, SCEA asks that the Court impose an injunction restraining Defendants from: "a. violating SCEA's rights under the Lanham Act," "b. engaging in any unfair competition," "c. engaging in any misappropriation of SCEA's property," and "d. engaging in any tortious interference with SCEA's contractual relations." (FAC, Prayer For Relief ¶ 2.)

III. ARGUMENT

A. Applicable Pleading Standards.

A court may dismiss a claim under Federal Rule of Civil Procedure 12(b)(6) where "there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory." *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). There can be no dispute that the Complaint "must contain . . . factual allegations with respect to all material elements of the claim[s]" asserted by SCEA. *McCoy v. Stonebridge Life Ins. Co.*, 2012 WL 4498819, at *2 (E.D. Tenn. Sept. 28, 2012). To survive a motion to dismiss, plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). Litigants are

expected to allege "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. The allegations must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Id.*

In addition to being the appropriate vehicle for challenging an entire claim, the Ninth Circuit also recently established that a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is the appropriate mechanism for challenging an impermissible request for relief. *Whittlestone, Inc. v. Handi-Craft, Co.*, 618 F.3d 970, 974–75 (9th Cir. 2010) ("Rule 12(f) does not authorize district courts to strike claims for damages on the ground that such claims are precluded as a matter of law."); *see also In re Toyota Motor Corp.*, 754 F.Supp.2d 1145, 1169 (C.D. Cal. 2010) ("Where a party moves to strike a prayer for damages on the basis that the damages sought are precluded as a matter of law, the request is more appropriately examined as a motion to dismiss."). The Ninth Circuit's reasoning and approach applies both to requests for injunctive relief and to requests for damages. *Kennedy v. Gonzalez*, 2011 WL 6130857, at *1 (E.D. Cal. Dec. 8, 2011); *In re Toyota Motor Corp.*, 754 F.Supp.2d at 1195; *see also Fountain v. Lebron*, 2011 WL 6749798, at *2 n.3 (E.D. Cal. Dec. 22, 2011); *East v. City of Richmond*, 2010 WL 4580112, at *6 n.3 (N.D. Cal. Nov. 3, 2010); *E.E.O.C. v. Global Horizons, Inc.*, 860 F.Supp.2d 1172, 1181 (D. Haw. 2012).

B. SCEA's Claim For Tortious Interference With Contractual Relations Should Be Dismissed As To TRG.

Under California law, '[t]he elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." *Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal.3d 1118, 1126 (1990) (citations omitted). Of course, it is not sufficient to simply "plead the elements." *Twombly*, 550 U.S. at 555. SCEA must allege "facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570 (emphasis added). SCEA plainly failed to meet this standard here.

While SCEA spends considerable time in the FAC identifying and describing its contract with Wildcat Creek, it does not allege sufficient facts about TRG or Bridgestone's supposed knowledge of that contract, nor does it allege sufficient facts about acts by TRG or Bridgestone undertaken with the intent to interfere with the SCEA/Wildcat Creek contract or to induce Wildcat Creek to breach the contract. Indeed, this is not an instance where the factual allegations are merely insufficient. Here, there are no facts alleged at all. SCEA alleges only the threadbare knowledge and intentional interference/inducement elements—specifically that: (1) "On information and belief, Bridgestone and TRG were aware of the existence of the [SCEA/Wildcat Creek] Agreement, including the exclusivity provision in which Wildcat Creek agreed not to provide services for any products in competition with Playstation products"; and (2) "On information and belief, Bridgestone and TRG knew that interference with the [SCEA/Wildcat Creek] Agreement would occur when the actor provided services to promote the Nintendo Wii in the Co-Promotion." (FAC ¶ 26.)[1] SCEA does not allege that it informed Bridgestone or TRG about the exclusivity agreement prior to the production of the Game On! commercial, nor does SCEA allege that Wildcat Creek or its representatives did so. There are no factual allegations whatsoever—much less allegations that would satisfy the "plausibility" standard—regarding TRG's supposed knowledge and intent to interfere/induce a breach.

Federal courts have been clear that a plaintiff must include more than conclusory allegations regarding knowledge and intentional interference/inducement in order to adequately plead a tortious interference claim like the one advanced here by SCEA. *See, e.g.*, *Hoffman v. L & M Arts*, 774 F.Supp.2d 826, 846 (N.D. Tex. 2011). In *Hoffman*, plaintiff asserted a tortious interference with contract claim against Sotheby's for allegedly inducing another party to breach its agreement with plaintiff concerning the sale of artwork. 774 F.Supp.2d at 831.[2] Like SCEA,

[1] SCEA does no better in its tortious interference claim section by only alleging that "Defendants had knowledge of [the SCEA/Wildcat Creek] contractual relationship and the exclusive nature of it," and that "Defendants intentionally interfered with SCEA's contractual relationship through the unlawful conduct alleged herein." (FAC ¶¶ 63-64.) Once again, SCEA alleges no facts.

[2] The elements of the tortious interference with contract claim at issue in *Hoffman* are the same as the elements of SCEA's tortious interference with contractual relations claim here. *See id.* at 845 n.14.

plaintiff there conclusorily alleged that Sotheby's, "[w]ith knowledge of the contract . . . intentionally and willfully interfered, and continue[s] to interfere, with the contract without justification, and [its] interference induce[d] and continues to induce Defendant Martinez's breach of the Contract." *Id.* at 846. The court found those allegations to be deficient, and on that basis dismissed the tortious interference claim on the pleadings. *Id*. at 848. The court concluded that plaintiff's "allegations about the knowledge of the Letter Agreement and intent of Sotheby's . . . are conclusory and are insufficient to state a plausible claim for tortious interference with contract." *Id.* at 846. The court went on to underscore that "[i]t is not enough to allege that a defendant had 'knowledge' of a contract or 'intentionally' interfered because this is nothing more than a recital of some of the required elements for a claim of tortious interference with contract." *Id.*[3] Recognizing the current pleading standards established by the Supreme Court, the court noted that "[A] complaint [does not] suffice if it tenders naked assertion[s] devoid of further factual enhancement." *Id.* (quoting *Iqbal*, 556 U.S. at 678) (internal quotations omitted).

SCEA's allegations are no different here. The result should also be no different. Both in the general allegations section and as part of the tortious interference claim, SCEA merely pled the elements of knowledge and inducement. (FAC ¶¶ 26, 63-64.) The case law is clear that dismissal is warranted under such circumstances. *See Hoffman*, 774 F.Supp.2d at 846; *Yagman*, 2013 WL 1287409, at *5; *Horizon AG-Products*, 2010 WL 4054131, at *11. Indeed, this Court, specifically, has recognized that allegations constituting "little more than a conclusory restatement of the elements of a tortious interference claim" are insufficient, and mandate dismissal on the pleadings. *See Amaretto Ranch Breedables, LLC v. Ozimals, Inc.*, 790 F.Supp.2d 1024, 1032 (N.D. Cal. 2011) (this Court held that plaintiff's conclusory allegations

[3] *See also Yagman v. Galipo*, 2013 WL 1287409, at *5 (C.D. Cal. Mar. 25, 2013) (granting motion to dismiss tortious interference claims because plaintiff's conclusory allegations of intent were "threadbare recitations of nothing more than the elements of each claim," and failed to "allege plausible facts indicating that [defendant's] actions were intentionally designed to cause [the] breach."); *Horizon AG-Products v. Precision Systems Engineering, Inc.*, 2010 WL 4054131, at *11 (D. N.M. Sept. 28, 2010) (dismissed claim for tortious interference because plaintiff's allegations that defendant "was aware or should have been aware" of agreements was conclusory and lacked "facts regarding the basis of [defendant's] knowledge; for example, [plaintiff] does not allege that it informed defendant of its existing contracts.")

regarding actual disruption were conclusory and lacked sufficient facts to maintain a claim for tortious interference with prospective economic advantage).

Notably, this is not just a ministerial matter. TRG submits that it would not be possible for SCEA to allege in good faith any facts tending to demonstrate TRG had prior knowledge of any contractual obligation limiting Wildcat Creek's ability to furnish the services Lambert provided in connection with the production of the Game On! commercial, nor can SCEA allege in good faith any facts tending to demonstrate that TRG acted with the intent to interfere with the SCEA/ Wildcat Creek agreement or induce a breach or it. It is simply not the case, and without such factual allegations, the Court should not allow this claim to proceed forward against TRG (or against Bridgestone, even though this Motion is brought only on behalf of TRG).

C. SCEA's Request For Injunctive Relief Against TRG Should Be Dismissed As To All Claims.

SCEA seeks from this Court an injunction broadly restraining Defendants from: "a. violating SCEA's rights under the Lanham Act," "b. engaging in any unfair competition," "c. engaging in any misappropriation of SCEA's property," and "d. engaging in any tortious interference with SCEA's contractual relations." (FAC, Prayer For Relief ¶ 2.) There are three reasons, each of which is independently sufficient, that the Court should dismiss this injunctive relief claim in its entirety at the pleading stage.

First, SCEA has not alleged (and cannot allege) any continuing conduct that should be enjoined. "The sole function of an action for injunction is to forestall future violations." *United States v. Oregon State Med. Soc.*, 343 U.S. 326, 333 (1952). SCEA alleges what it claims to be past violations of its rights based on the Game On! commercial, but nowhere in the FAC is there any allegation that the Game On! commercial is still being broadcast, nor are there any allegations that TRG is continuing to use or intends to use Lambert in the future in commercials for Bridgestone (or any other client) in violation of any of SCEA's rights. In fact, SCEA is explicit in the FAC that the Game-On! commercial was still airing "at the time of filing the original Complaint" (on September 11, 2012), but cannot make the same allegation as to the time of the filing of the FAC. Indeed, any such allegations would be flatly untrue. Absent allegations

of continuing violations by TRG or a likelihood that violations will occur in the future, the Court should dismiss SCEA's injunctive relief in its entirety on the pleadings. *See Rose v. City of Los Angeles*, 814 F. Supp. 878, 885 (C.D. Cal. 1993) (dismissing plaintiff's injunctive relief claim on a 12(b)(6) motion because plaintiff failed to allege a credible threat of future injury to plaintiff.).

Second, the injunctive relief claim is deficiently pled. It is axiomatic that under Federal Rule of Civil Procedure 65, "an injunction must be narrowly tailored to remedy the specific action necessitating the injunction." *Castro v. Kailin*, 2012 WL 209187, at *3 (C.D. Cal. Jan. 24, 2012) (internal citations omitted). There is good reason for this. "Since an injunctive order prohibits conduct under threat of judicial punishment, basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed." *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974); *see also Brady v. United of Omaha Life Ins. Co.*, 2012 WL 3583033, at *8 (N.D. Cal. Aug. 20, 2012). Accordingly, where "the injunction sought is of such an indeterminate character that an enjoined party cannot readily determine what conduct is being prohibited," it should be denied. *Brady*, 2012 WL 3583033, at *8.

SCEA gets no refuge from expectations of specificity by arguing that this matter is only at the pleading stage. While a complaint "is not required to 'proffer a prayer for injunctive relief satisfying Rule 65(d)'s exacting precision,' [it] nonetheless must still 'describe the desired equitable relief in sufficient detail for the court to determine whether . . . relief is potentially appropriate and manageable.'" *Castro*, 2012 WL 209187, at *3; *see also Brady*, 2012 WL 3583033, at *8 (denying injunctive relief at the pleading stage, noting that "[c]ourts have declined injunctive relief where the injunction sought is of such an indeterminate character that an enjoined party cannot readily determine what conduct is being prohibited"); *Mancha v. Immigration & Customs Enforcement*, 2007 WL 4287766, at *3 (N.D. Ga. Dec. 5, 2007) (granting motion to dismiss "obey the law"-type injunctive relief request as impermissibly vague); *Brandner v. Abbott Laboratories, Inc.*, 2012 WL 27696, at *4–5 (E.D. La. Jan. 5, 2012) (granting judgment on the pleadings where request for injunctive relief was impermissibly vague). As with the rest of SCEA's claims, its request for injunctive relief is subject to the

current federal pleading standards set by the Supreme Court in *Twombly* and *Iqbal*. *See, e.g.*, *Wright v. Gen. Mills, Inc.*, 2009 WL 3247148, at *5 (S.D. Cal. Sept. 30, 2009).

Here, SCEA comes nowhere near satisfying its pleading requirements. SCEA seeks from this Court an injunction broadly restraining Defendants from: "a. violating SCEA's rights under the Lanham Act," "b. engaging in any unfair competition," "c. engaging in any misappropriation of SCEA's property," and "d. engaging in any tortious interference with SCEA's contractual relations." (FAC, Prayer For Relief ¶ 2.) This kind of "obey the law" injunction is highly disfavored, and with good reason. "Broad, non-specific language that merely enjoins a party to obey the law or comply with an agreement . . . does not give the restrained party fair notice of what conduct will risk contempt." *Louis W. Epstein Family P'ship v. Kmart Corp.*, 13 F.3d 762, 771 (3d Cir. 1994); *see also Mancha*, 2007 WL 4287766, at *3 ("A vague and open-ended injunction might pose an unnecessary burden on the Defendants who would face an additional threat of contempt sanctions for violating a law that they were already supposed to follow."); *Howard Opera House Associates v. Urban Outfitters, Inc.*, 322 F.3d 125, 129-30 (2d Cir. 2003) (noting that it is one thing for a noise ordinance to be cast in general terms, but it is quite another "for an injunction, which applies to a particular case, and violation of which is punishable by contempt, to fail to provide reasonable specificity"). Without specifically identifying what SCEA contends TRG should be enjoined from doing, "the desired equitable relief" is plainly not described "in sufficient detail for [this Court] to determine whether . . . relief is potentially appropriate and manageable." *See Castro*, 2012 WL 209187, at *3; *Brady*, 2012 WL 3583033, at *8. Under circumstances like these, the Court need not, and should not, wait to act. SCEA's injunctive relief request should be dismissed at the pleading stage. *See Castro*, 2012 WL 209187, at *3; *Brady*, 2012 WL 3583033, at *8; *Mancha*, 2007 WL 4287766, at *3.

Third, SCEA's injunctive relief request should be dismissed because it exceeds the breadth of the matters put at issue by the FAC. *See Castro*, 2012 WL 209187, at *3 ("an injunction must be narrowly tailored to remedy the specific action necessitating the injunction"). The claims SCEA advances in the FAC all relate to the production and broadcast of the Game On! commercial. SCEA's broadly-worded "obey the law" injunctive relief request clearly

extends far beyond that subject. For that reason as well, the injunction claim should be dismissed as to TRG (and as to Bridgestone).

D. SCEA's Claim For California Business & Professions Code Section 17200 Should Be Dismissed As To TRG.

The only remedies available for a violation of California Business & Professions Code section 17200 are injunctive relief and restitution. Bus. & Prof. Code § 17203; *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134, 1149 (2003) ("A [Section 17200] action is equitable in nature; damages cannot be recovered . . . . '[p]revailing plaintiffs are generally limited to injunctive relief and restitution.'" (internal citations omitted)). For the reasons discussed in the preceding section, the Court should dismiss SCEA's request for injunctive relief as to all claims, including this one. That would leave only restitution as a potential remedy for this claim.

SCEA makes no request for restitution, and that remedy would be legally untenable here in any event. SCEA makes no reference to restitution in the section of the FAC specifically addressing its claims under the Business & Professions Code section 17200 claim. In the Prayer for Relief section, there is a general request for recovery of lost "profits and damages," but that is specific to "Bridgestone's unlawful acts alleged" in the FAC. There is no similar request as to alleged acts by TRG. Yet, even if SCEA had made that same request as to TRG, the California Supreme Court has limited restitution recoveries to "money or property that defendants took directly from plaintiff" or "money or property in which [plaintiff] has a vested interest." *Korea Supply Co.*, 29 Cal.4th at 1149. Case law is clear that a party may not disguise a damages claim as a claim for restitution. *Id*. at 1152. SCEA has not alleged that TRG took any of SCEA's "money or property," nor has SCEA alleged that TRG has "money or property in which [SCEA] has a vested interest." *See Watson Laboratories, Inc. v. Rhone–Poulenc Rorer, Inc.*, 178 F.Supp.2d 1099, 1121-1122 (C.D. Cal. 2001) (it is not restitution where plaintiff seeks monetary relief because "one competitor reaps a benefit at the expense of, but not from, another competitor"). As the *Watson* court explained, "[t]here is a difference between 'getting' and 'getting back.'" *Id.* at 1122.

SCEA clearly has not alleged an entitlement to monetary relief that could conceivably be considered restitution. Since there is no available remedy to SCEA for its Business & Professions Code section 17200 claim, the Court should dismiss that claim as well.

IV. CONCLUSION

For all of the reasons discussed here, TRG respectfully requests that the Court dismiss SCEA's second claim for relief (violation of California Business & Professions Code section 17200) and fifth claim for relief (tortious interference with contractual relations), and also dismiss SCEA's request for injunctive relief as to all claims.

Dated: May 7, 2013

Respectfully submitted,

CARLSMITH BALL LLP

By: /s/ Justin M. Goldstein
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THE RICHARDS GROUP, INC.